

REMARKS

Applicant has carefully reviewed the Application in light of the Office Action mailed July 27, 2005. At the time of the Office Action, Claims 3, 5-6, 8-9, 11-12, 14-15, 17-19, 21-29, and 31-39 were pending in the Application. Applicant respectfully requests reconsideration of the pending claims and favorable action in this case.

Section 103 Rejection

The Examiner rejects Claims 3, 5-6, 8-9, 11-12, 14-15, and 17-19 under 35 U.S.C. §103(a), as being unpatentable over Japan No. JP02000209298A issued to Marinho, et al. (hereinafter “*Marinho*”) in view of U.S. Publication No. 2002/0024964 issued to Baum et al. (hereinafter “*Baum*”) and U.S. Patent No. 6,865,185 issued to Patel et al. (hereinafter “*Patel*”). According to 35 U.S.C. §103(c)(1), “[s]ubject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.” Applicant respectfully submits that *Patel* and the Application were owned by or subject to an obligation of assignment to Cisco Technology, Inc. at the time the invention claimed in the Application occurred. Therefore, *Patel* is not available as a reference to support the Examiner’s rejection. Accordingly, Applicant respectfully requests reconsideration and allowance of Claims 3, 5-6, 8-9, 11-12, 14-15, and 17-19.

The Examiner rejects Claims 21-22 and 31-32 under 35 U.S.C. §103(a), as being unpatentable over *Marinho* in view of U.S. Patent No. 6,760,312 issued to Hitzeman (hereinafter “*Hitzeman*”). To defeat a patent under 35 U.S.C. §103, the claimed *combination* must be obvious. *Kimberly-Clark Corp. v. Johnson & Johnson*, 745 F.2d 1437, 223 U.S.P.Q. 603 (Fed. Cir. 1984). Therefore, it is essential to view the invention as a whole, taking each element into account as well as the advantages, properties, utilities, and results of the invention. *In re Chupp*, 816 F.2d 643, 2 U.S.P.Q.2d 1437 (Fed. Cir. 1987).

Applicant respectfully submits that the above-mentioned combination fails to disclose, teach, or suggest the limitations recited in Claim 22. For example, *Marinho* in combination with *Hitzeman* fails to teach “estimating the performance increase available to the connection by upgrading its service class from the base service class to the upgraded

service class.” Instead, the *Marinho/Hitzeman* combination discloses changing the quality of service (QoS) if the user-inputted QoS code is valid or invalid. Therefore, the combination of *Marinho* and *Hitzeman* does not disclose, teach, or suggest the limitations in Applicant’s claims. Accordingly, Applicant respectfully requests reconsideration and allowance of Claim 22 together with its dependents.

Independent Claim 32 recites certain limitations that, for reasons substantially similar to those discussed with reference to independent Claim 22, are not disclosed, taught, or suggested by the combination. Applicant respectfully requests reconsideration and allowance of independent Claim 32 together with their dependents.

The Examiner rejects Claims 23-29 and 33-39 under 35 U.S.C. §103(a), as being unpatentable over *Marinho* in view of *Hitzeman* as applied to Claims 22 and 32, and further in view of *Patel*.

First, Claims 23-29 depend from Claim 22 and Claims 33-39 depend from Claim 32, which Applicant has shown above to be allowable. For at least this reason, Claims 23-29 and Claims 33-39 are allowable over the prior art.

Second, Applicant respectfully submits, as discussed above, that *Patel* is not available as a reference to support the Examiner’s rejection. Accordingly, Applicant respectfully requests reconsideration and allowance of Claims 23-29 and Claims 33-39.

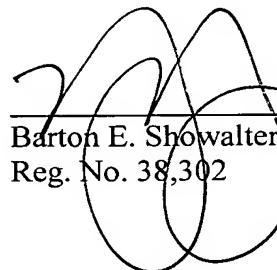
CONCLUSION

Applicants have now made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for all other reasons clear and apparent, Applicants respectfully request reconsideration and allowance of the pending claims.

Applicants believe no fee is due. However, if this is not the case, the Commissioner is hereby authorized to charge any amount required or credit any overpayment to Deposit Account No. 02-0384 of BAKER BOTTs L.L.P.

If there are matters that can be discussed by telephone to advance prosecution of this application, Applicants invite the Examiner to contact its attorney, Barton E. Showalter, at (214) 953-6509.

Respectfully submitted,
BAKER BOTTs L.L.P.
Attorneys for Applicants



Barton E. Showalter
Reg. No. 38,302

Date: Oct 14, 2005

Correspondence Address:

Customer No. **05073**